

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7329 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAHLADBHAI RAVJIBHAI THAKOR

Versus

STATE OF GUJARAT

Appearance:

M/S TRIVEDI & GUPTA for Petitioner

MR KT DAVE ASSTT. G.P. for Respondent No. 1

MR KS JHAVERI for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/09/98

ORAL JUDGEMENT

Rule. Mr. K.T.Dave, learned Assistant Government Pleader appearing for respondent No. 1 and Mr. K.S.Jhaveri, learned advocate appearing for respondent No. 2 waive service of rule. On the facts and in the circumstanc of the case, the matter is taken up for final hearing today.

2. It is unfortunate that there is a rift between the petitioner-Upsarpanch Prahladbhai Ravjibhai Thakore and the Sarpanch Sakinabanu Habibbhai Momin, respondent No. 2 herein. Be that as it may, the short question in this petition is that the petitioner has not been given any opportunity in respect of his two applications dated 30th July, 1998 and 14th August, 1998. The case of the petitioner is that by application dated 30th July, 1998, he filed caveat application before the appellate authority and by application dated 14th August, 1998, he had prayed for being joined as party to the proceedings before the appellate authority. It would appear that the impugned order of allowing the appeal and remanding the matter to the District Development Officer has been passed without hearing the petitioner even on his application for joining as party. The fact that the application dated 14th August, 1998 moved by the petitioner before the appellate authority has not been decided after giving opportunity of hearing to the petitioner cannot be disputed. It is a different matter that if the said application is decided after hearing the petitioner and then the appeal is heard on merits and sent back to the lower authority for deciding the same after hearing the second respondent. On this short question, the impugned order will have to be set aside and the matter has to be remanded to the appellate authority who will first decide the application dated 14th August, 1998 after hearing the petitioner in accordance with law and then decide the appeal after hearing the respondent no. 2 in case the petitioner is not permitted to be joined as party to the proceedings before the appellate authority and after hearing the petitioner and respondent no. 2 in case the petitioner is permitted to be joined as party to the appellate proceedings.

3. The next question is with regard to who is to be in charge of the office of Sarpanch. This is hotly contested by the petitioner and the second respondent. Respondent No. 2 has presented before this Court copies of communication addressed by her to the Taluka Development Officer stating therein that she has resumed the charge by making panchanama. Of course, it is apparent on the face of this communication that she has assumed the charge ex-parte. Under such circumstances, Mr. Trivedi, learned advocate appearing for the petitioner submits that the charge has not been handed over by the present petitioner to respondent No. 2. This is highly disputed question of fact. At the same

time, it would appear that when the appeal is pending and when the charge was alleged to have been taken over by the Upsarpanch during the pendency of the appeal before the appellate authority, it would be just and proper to direct the charge being handed over to the second respondent forthwith. Following directions are, therefore, issued :

The impugned order of the appellate authority remanding the matter to the lower authority is hereby quashed and set aside with a direction that the appellate authority will first hear and decide the application dated 14th August, 1998 moved by the present petitioner for being joined as party to the proceedings before the appellate authority, strictly in accordance with law and merits without being influenced by the fact that the impugned order has been set aside by this Court. However, the appellate authority will hear the petitioner before deciding the said application dated 14th August, 1998. The appellate authority will also hear the second respondent on that application. Decision shall be taken by the appellate authority strictly on merits and in accordance with law after hearing the parties within a period of two weeks from the date of receipt of writ of these directions. In the meantime, charge of the office of Sarpanch shall be immediately handed over by the petitioner to the second respondent, in case any papers are lying with the petitioner with regard to the functioning of the office of Sarpanch.

Rule is made absolute in terms indicated hereinabove with no order as to cost.

Vyas